



DEQ-VALLEY

JUN 24 2011

TO: _____

FILE: _____

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

Douglas W. Domenech
Secretary of Natural Resources

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David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ROUTE 240, LLC

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Route 240, LLC, regarding the Starr Hill brewery building in Crozet, Virginia, for the purpose of resolving certain violations of the State Water Control Law and the Regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "ACSA" means Albemarle County Service Authority.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" or "Plant" means the Starr Hill Brewery building owned by Route 240, LLC which is located at 5391 Three Notched Road in Crozet, Virginia. The Facility is the

location of the brewery operation of Starr Hill Brewing Company which brews and bottles a variety of craft beers.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
8. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.
9. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
10. "R240" means Route 240, LLC.
11. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
13. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
14. "Va. Code" means the Code of Virginia (1950), as amended.

15. "VAC" means the Virginia Administrative Code.
16. "VPDES" means the Virginia Pollutant Discharge Elimination System.
17. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: The Board's Findings of Facts and Conclusions of Law

1. Route 240, LLC owns the Facility and Starr Hill Brewing Company owns and operates the brewery business within the Facility. The brewery produced approximately 15,300 barrels of a variety of craft beers in 2010 and expects to brew approximately 19,500 barrels in 2011.
2. On March 29, 2011, DEQ was contacted by ACSA staff to relay a report made by a resident of the Western Ridge development in Crozet, VA. The citizen reported "dead frogs" and a "sewage smell" coming from the creek running to the south of the housing development.
3. On March 29, 2011, DEQ investigated the pollution complaint and noted an unpermitted discharge to an unnamed tributary to Lickinghole Creek. During the investigation, DEQ staff determined that R240 had an unpermitted discharge of a clear, reddish brown liquid overflowing from a 12 inch pipe, with environmental impact, to an unnamed tributary of Lickinghole Creek. The 12 inch pipe ordinarily discharges to the ACSA sewer system, but it was determined that a blockage in the pipe caused a backup and overflow of effluent from an open portion of the pipe to which a flow meter apparently had previously been connected.
4. The unnamed tributary to Lickinghole Creek is located in the James (Middle) River Basin. The Lickinghole Creek from its headwaters to its confluence with Mechums River is listed in DEQ's 303(d) report as impaired for benthics. The source of impairment is attributed to non-point source discharges.
5. On March 30, 2011, during DEQ's continuing investigation, staff observed significant deposits of solids along the stream banks, visible bacterial colonies, strong brew odor and dead aquatic organisms as a result of the unpermitted discharges. During the March 30, 2011 inspection, DEQ observed that the opening in the pipe was repaired/patched by R240.
6. On April 7, 2011, VRO issued Notice of Violation No. NOV-11-04-VRO-001 to R240 for the unpermitted discharge(s) to State waters in March 2011.
7. On April 26, 2011, Department staff met with representatives of R240 to discuss the unpermitted discharge(s), what led to the discharge(s) and the corrective actions R240

had taken and planned to take to address the unpermitted discharges. DEQ requested R240 submit, and R240 agreed to submit, a plan and schedule of additional corrective actions to address the unpermitted discharge(s) and the effects on the receiving stream.

8. By letter dated May 27, 2010, R240 submitted to DEQ a summary of completed and in-progress corrective actions, and a plan and schedule of corrective actions to address the effects of the unpermitted discharge(s).
9. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
10. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
12. The Department has issued no wastewater discharge permits or certificates to R240.
13. The unnamed tributary to Lickinghole Creek and Lickinghole Creek are surface waters located wholly within the Commonwealth and are “state waters” under State Water Control Law.
14. Based on the R240’s letter(s) to DEQ, the NOV, the April 26, 2011 meeting, and a file review, the Board concludes that the R240 has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, because untreated wastewaters from the Brewery have been discharged to State waters and the discharge(s) were not in compliance with a permit or certificate issued by the Board, the Regulation and the Va. Code, as described in paragraph C(3)above.
15. In order for the R240 to provide for compliance with the Regulation and Va. Code § 62.1-44.5, DEQ and representatives of R240 have agreed to the schedule of compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the R240 and R240 hereby agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of ~~\$9,100~~ within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

R240 shall include its Federal Employer Identification Number (FEIN) (54-2032145) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

3. Submit to the Department, at the address shown above, a separate check payable to the "Treasurer of Virginia", in the amount of \$714.03 to cover DEQ's costs in the investigations of the unpermitted discharges. R240 shall submit the check within 30 days of the effective date of the Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of R240 for good cause shown by R240, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations described in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, R240 admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. R240 consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. R240 declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by R240 to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. R240 does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. R240 shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. R240 shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. R240 shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which R240 intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

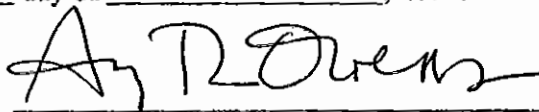
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and R240. Nevertheless, R240 agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. R240 petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to R240.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve R240 from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by R240 and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of R240 certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind R240 to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of R240.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, R240 voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23rd day of September, 2011.



Amy T. Owens, Regional Director
Department of Environmental Quality

Route 240, LLC voluntarily agrees to the issuance of this Order.

Date: 6/23/2011 By: James Morris, Manager
(Person) (Title)
Route 240, LLC

Commonwealth of Virginia

City/County of Albemarle

The foregoing document was signed and acknowledged before me this 23 day of
June, 2011, by James Morris who is

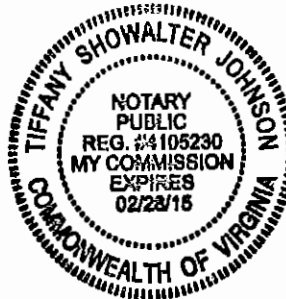
manager of Route 240, LLC on behalf of Route 240, LLC.

Tiffany Showalter Johnson
Notary Public

4105230
Registration No.

My commission expires: February 28, 2015

Notary seal:



**APPENDIX A
SCHEDULE OF COMPLIANCE
ROUTE 240, LLC**

1. By July 15, 2011, R240 shall complete the stream remediation outlined in its May 27, 2011 letter to the Department including:
 - a. recirculation of stream waters to the outfall of the existing storm water pipe to increase stream aeration and to wash out residual brewery waste trapped in stream sediments;
 - b. removal of sediment from the catchment basins; and,
 - c. upon completion of the stream remediation, removal of equipment and dismantling the catch basins.
2. No later than 14 days following a completion date identified in the above schedule of compliance R240 shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.
3. **DEQ Contact**

Unless otherwise specified in this Order, R240 shall submit all requirements of Appendix A of this Order to:

**Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov**